

Association of Corporate Counsel South Central Texas Chapter

The ABC's of NDA's

Panel Discussion

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Opinions / statements expressed herein are the personal opinions/statements of the participants only. Information and “best practices” are provided for informational purposes only. Consult with your professional advisor regarding your particular facts and circumstances.

Contract Provisions – General

- Purpose / Scope
 - Single purpose / ongoing
 - Unilateral / mutual
- Definitions
 - Confidential information
 - PII
 - Marking requirements
 - Oral disclosures

Confidentiality Scope

- Exceptions to Confidentiality
 - Info known to a party before disclosure
 - Info independently developed w/out access
 - Info rightfully received w/out duty of confidentiality
 - Info available to the public through no fault of party
- Independent / Simultaneous Development
- Residual Knowledge

Governance / Term

- Information Governance
 - Audit rights
 - Destruction / purging of information upon termination / render indecipherable or illegible
 - Security controls (subcontractor duties)
 - Record retention duties
 - Disaster recovery duties
 - Notification of breach
 - Legally required / compelled disclosure
- Term
 - Length of agreement
 - Length of confidentiality period vs. disclosure period

Termination / Ownership Rights

- Termination Rights
 - Materiality
 - Right to cure
 - Notice provisions
- Ownership / License of Confidential Information
 - Disclosing party owns
 - Limited or no license

Access to the Information

- Employees – all or some
- Consultants
- Professional Advisors
- Successors

Remedies

- Remedies upon breach
 - Notification to the affected party
 - Obligation to cooperate / mitigate
 - Ability to investigate
 - Equitable relief
 - Damages / liquidated damages
 - Consequential damage waiver

Miscellaneous Considerations

- Relationship to other contracts
- Warranties
- Governing Law
- Venue
- Third party beneficiaries
- Compliance w/ laws
- Assignment / subcontracting rights
- Authorization to make disclosure

Questions?